

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

77-6126

DOCKET NO.

77-6126

IRA G. SAFFESS

PLAINTIFF-APPELANT

- v. -

L. J. SCHAFFNER, DIRECTOR, HEALTH RECORDS
DIVISION, BUREAU OF MEDICINE + SURGERY,
DEPARTMENT OF THE NAVY, & SECRETARY OF
THE NAVY,

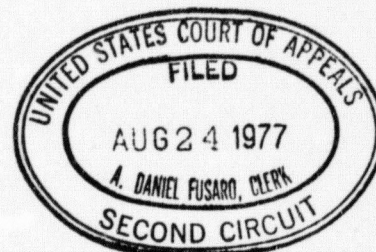
DEFENDANTS-APPELLEES

77 CIV. 1987 (WR)

B

P/S

JOINT APPENDIX



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PLAINTIFFS

JAFFESS, IRA G.

DEFENDANTS

KNAPP, J.

SCHAFFNER, L.J. Director Health
Records Division
Bureau of Medicine & Surgery
Department of the Navy
SECRETARY OF THE NAVY

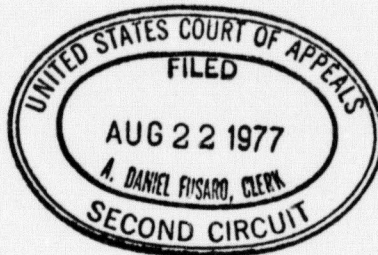
CAUSE

Privacy Act & Freedom of information Act. Procurement of plttf's records & deprivation
of plttf's constitutional rights. IMC
Cause previously filed with Judge Lawrence W. Pierce

ATTORNEYS

IRA G. JAFFESS (Pro Se)
150 Bennett Avenue
NY, NY 10040
Tel: WA 7-9236

Robert B. Fiske, Jr.
U S Atty, S.D.N.Y.
1 St. Andrews Plz.
New York, NY 10007
#212 791-9174



☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA
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DATE

APR 25 1977

FILING FEES PAID

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

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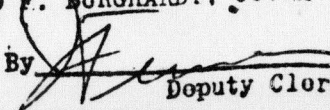
DC-111 (Rev. 1/75)

PROCEEDINGS

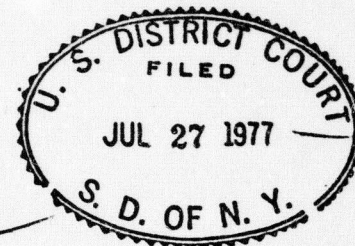
1. Filed complaint. Issued summons.
2. Fld. summons & entered marshal's return, served on:
Sectretary of the Navy by Pauline Troia, U.S. Atty's Office on 4-28-77
and certified mail receipt # 955474 on Secty of the Navy and #955473 on
Atty. General
Director, Health Records Division, Sureau of Medicine & Surgery receipt # 955475.
6-2-77 3 Fld Answer to complaint. US Atty.
- 6-14-77 4 Fld affdvt of defts re: oppos. to plttffs motion for summary jdgmt.
- 7-27-77 5 Fld MEMORANDUM & ORDER. We dismiss complaint for mootness. Let Clk enter order dis-
missing complaint and terminating action. Knapp, J. m/n m/copy to Pro Se
- 8/9/77 6 Fld Notice of Appeal to the U.S.C.A By plttff from the decison & order
dismissang his complaint. m/n

B

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By  Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



IRA G. JAFFESS,

Plaintiff,

- against -

L. J. SCHAFFNER, Director,
Health Records Division,
Bureau of Medicine and Surgery,
Department of the Navy, and
SECRETARY OF THE NAVY,

Defendants.

MEMORANDUM AND ORDER

77 Civ. 1987

KNAPP, D.J.

Acting pro se the plaintiff has moved for summary judgment on his complaint seeking \$100,000 in damages pursuant to the Freedom of Information Act and the Privacy Act, 5 U.S.C. §§552, 552(a), as a result of defendants' failure to comply with his request for a copy of a letter dated February 15, 1943 from his Navy psychiatric file. Plaintiff seeks the letter in connection with a claim for benefits he is pursuing before the Veterans Administration. We deny the motion and, searching the record, dismiss the complaint.

The defendants initially determined that pursuant to Navy regulation ^{1/} the letter in question would be released only to a physician who could then interpret - or show - its contents to the plaintiff. The plaintiff objected to that condition and

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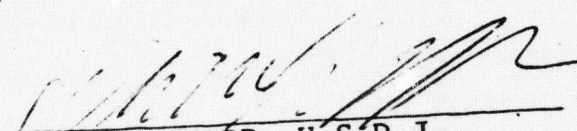
refused to consult a physician. After this motion was filed, however, a Navy psychiatrist changed his opinion and on June 13, 1977, the letter was released directly to the plaintiff. The government now urges us to dismiss the complaint for mootness, and the plaintiff protests, maintaining that he is entitled to damages for the three month delay from his initial request for the letter. He apparently believes that such damages should be assessed as a punitive measure, in order to "set an example for the defense community."^{2/}

We find that as a matter of law plaintiff's claim for damages must be dismissed. Although the Privacy Act does provide an award of actual damages for the intentional and willful failure of an agency to comply with an appropriate request for documents,^{3/} it contains no allowance for punitive damages. The Freedom of Information Act makes no provision for damages other than counsel fees. Plaintiff has alleged no actual damages whatsoever, and - even construing the record in favor of the pro se litigant - we fail to perceive how such damages could be alleged. Moreover, the plaintiff has alleged no facts to suggest that in relying upon departmental regulation the defendants were acting in anything other than good faith. We might infer from the Navy's change of position that its original determination to release the letter only to a physician was mistaken, but we can not infer that the Navy's actions were intentionally and willfully violative of the Act. Accordingly, we dismiss the complaint for mootness.

SO ORDERED. Let the Clerk enter an order dismissing the complaint and terminating the action.

Dated: New York, New York

July 20, 1977.


WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/ The Privacy Act provides in pertinent part, 5 U.S.C. §552a(F):

"(f) Agency rules. - In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall - . . .

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedures, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;:

The relevant Navy regulation SECNAVINST 5211.5A at §6a(5)(e) (41 Fed. Reg. 50661) provides:

"(e) Subject to the provisions of this paragraph, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse affect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access."

2/ Plaintiff's reply to government's affidavit, dated June 17, 1977.

3/ 5 U.S.C. §552a(g)(4).

attorney's names and addresses under the word "Notice" on bottom left.

If you are paying the \$5 fee, take this to Orders and Appeals, G-66, with sufficient additional copies for each defendant(s) attorney.

If you wish to file as an indigent, ask for and complete the declaration of poverty form required by the Court of Appeals (attached).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IRA G. JAFFESS -----X

-v-

L. S. SCHAFFNER
+
SECRETARY OF THE NAVY

Docket Number: 77 CIV. 1987

Judge: W. KNAPP, U.S.D.J.

-----X
NOTICE OF APPEAL
TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED
U.S. DISTRICT COURT
Aug 9 11 55 AM '77
S.D. OF N.Y.

Notice is hereby given that IRA G. JAFFESS, PLAINTIFF
above named, hereby appeals to the United States Court of
Appeals for the Second Circuit from the decision and order of
U.S.D.C. - S.D.N.Y. (W. KNAPP, J.) dismissing her/his
complaint or petition (cross out one) on JULY 30, 1977
(date)
1977.

Notice to:

IRA G. JAFFESS, PRO SE
US ATTORNEY

Signed

IRA G. JAFFESS

Address

150 BENNETT AVE.

Telephone

NEW YORK, NY - 10040 -
WA-7-9236

- NOTE: JUDGE OVERLOOKED CONSTITUTIONAL QUESTIONS -

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

IRA G. SAFFESS

Plaintiff

v.

L. S. SCHAFFNER
{ DIRECTOR, HEALTH RECORDS DIVISION
BUREAU OF MEDICINE + SURGERY
DEPARTMENT OF THE NAVY }
+
SECRETARY OF THE NAVY
Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon

IRA G. SAFFESS

Plouse
plaintiff's ~~address~~ y, whose address is:

150 BENNETT AVE, NEW YORK, N.Y. - 10040-

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Bughardt
Clerk of Court.2/ B Wasserman
Deputy Clerk.

Date: 25 APRIL 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----x
IRA G. JAFFESS

Plaintiff

-v.-

L. J. SCHAFFNER
Director, Health Records Division
Bureau of Medicine and Surgery
Department of the Navy
Washington, D.C. 20372

&

SECRETARY OF THE NAVY

Defendants
-----x

FIRST STATEMENT:

By Order of the Honorable Lawrence W. Pierce, dated January 4, 1977, the Plaintiff was directed to obtain all documents pertaining to his hospitalization in February and March of 1943 in a naval hospital from the Bureau of Medicine and Surgery. By letters dated March 24 and March 30, 1977 the Director of the Bureau informed the Plaintiff that he held a letter dated February 15, 1943 from the Third Naval District Intelligence Officer to the Commanding Officer, U. S. Naval Hospital, Brooklyn, New York. The Director also advised that he would not surrender the above letter to the Plaintiff. Enclosed letter from the Acting Director dated April 22, 1977 confirms this retention. Plaintiff is therefor suing in the amount of \$100,000 under the Privacy Act and the Freedom of Information Act. Plaintiff has exhausted all available administrative remedies under both a civil action, 76 CIV. 3436 and correspondence with the Navy Department.

SECOND STATEMENT: This Court has jurisdiction over federal agencies.

THIRD STATEMENT: Ira G. Jaffess, 150 Bennett Avenue, New York, New York 10040.

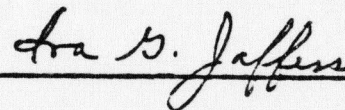
FOURTH STATEMENT: L. J. Schaffner, Director, Health Records Division, Bureau of Medicine and Surgery, Department of the Navy, Washington, D. C. 20372 & Secretary of the Navy, Office of the Secretary, Washington, D.C.

FIFTH STATEMENT: Plaintiff seeks the sum of \$100,000 in total from the two Defendants. Both Defendants have refused to forward to the Plaintiff the above letter of February 15, 1943. Plaintiff has the Constitutional right not to know or employ a Physician, Doctor of Medicine, ~~XXXXXXXXXXXX~~ or any other member in the field of Medicine or other healing arts.

Sworn to before me this

25 day of *APR* 1977.

TERRANCE T. MULRANE
NOTARY PUBLIC, S.D. of New York
No. 02- 818295
Qualified in Bronx County
Term Expires March 30, 1979


Ira G. Jaffess

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DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
WASHINGTON, D.C. 20372

IN REPLY REFER TO
BUMED:741:PED:sgm (A)
JAFFESS, Ira G.
646 04 02
22 April 1977

Mr. Ira G. Jaffess
150 Bennett Avenue
New York, New York 10040

Dear Mr. Jaffess:

This is in reply to your letter of 5 April 1977 concerning your desires to obtain a copy of a letter from the Third Naval District Intelligence Officer to the Commanding Officer, U. S. Naval Hospital, Brooklyn, New York dated 15 February 1943.

The letter in question, which was contained in your clinical record for your period of hospitalization at the U. S. Naval Hospital, Brooklyn, New York, and not in the Naval Investigative Service file, has been reviewed again by the Psychiatry Consultant to the Bureau of Medicine and Surgery. Based upon that review, it is this Bureau's opinion that the information contained in the letter is such that it must be interpreted by a physician. Accordingly, you are again requested to provide this Bureau with the name and address of a physician. Upon receipt of that information, the letter will be forwarded accordingly. As a matter of information, that letter may be provided to an appropriate court upon receipt of a subpoena in this Bureau.

It is regretted that I could not be of more assistance to you.

Sincerely,

E. E. ROVARIO
Commander, MSC, USN
Acting Director, Health Record
Division
By direction of the Surgeon General



-v-

Defendants.

: 77 Civ. 1987 (WK)

3. Admit that the Third Statement and Fourth Statement of the Complaint correctly identify the parties to this action and their respective addresses.

4. Deny the allegations of the Fifth Statement of the Complaint, except admit that the Bureau of Medicine and Surgery has declined to provide the requested letter directly to plaintiff, and that plaintiff seeks the relief described in the Fifth Statement.

First Affirmative Defense

5. The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

6. This Court lacks subject-matter jurisdiction over the claims asserted in the Complaint.

Third Affirmative Defense

7. This Court lacks personal jurisdiction over the defendants.

Fourth Affirmative Defense

8. The service of process in this action was legally insufficient.

Fifth Affirmative Defense

9. Plaintiff's claim for damages is barred by sovereign immunity.

Sixth Affirmative Defense

10. Plaintiff's claim for damages is barred by official immunity.

Seventh Affirmative Defense

11. All actions performed by the defendants in connection with any of the matters that are the subject of plaintiff's Complaint were done in good faith and in the reasonable belief that they were proper under applicable laws.

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77-1364

Wherefore it is respectfully requested that this Court dismiss the Complaint and award defendants the costs and disbursements of this action.

Dated: New York, New York

May 31, 1977

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: MICHAEL H. DOLINGER
Assistant United States Attorney
Telephone: (212) 791-9174

Sir:

You will p
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duly entered
in the office

Dated, N. Y.

To

Sir:

Please take
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United States
the Clerk, Ro
house, Foley
an, City of N
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sel can be hea

Dated, N. Y.

To

Please take notice that a _____
within is a copy, was this day _____
in the within entitled action, _____
of the Clerk of this Court.

_____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

notice that the within _____
ated for settlement and sig-
Honorable _____
District Judge, at the office of
om 601, United States Court-
Square, Borough of Manhat-
New York, on the _____ day of
_____, at 10:30 o'clock in the
or as soon thereafter as coun-
ard.

_____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

IRA G. JAFFESS,

Plaintiff,

-v-

L. J. SCHAFFNER, Director
Health Records Division, Bureau
of Medicine and Surgery,
Department of the Navy and
SECRETARY OF THE NAVY,

Defendants.

ANSWER
77 Civ. 1987 (WK)

ROBERT B. FISKE, JR.,

TEL. ~~911-9174~~ 791-9174 United States Attorney
Attorney for Defs.

Due service of a copy of the within is here
by admitted.

New York, _____, 19 _____

Attorney for

To

Attorney for

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRA G. JAFFESS

Plaintiff

-v-

L. J. SCHAFNER, Director,
Health Records Division, Bureau
of Medicine and Surgery,
Department of the Navy, and
SECRETARY OF THE NAVY

Defendants

77 CIV. 1987 (WK)

MOTION FOR SUMMARY JUDGMENT

It is clear that an Assistant United States Attorney acting on behalf of the U.S. Attorney for the Southern District has used the technique of the "Big Lie" in his answer to the original complaint of the Plaintiff. The Answer was dated May 31, 1977.

The Plaintiff encloses an Endorsement Order of the Honorable Lawrence W. Pierce, USDJ, dated February 7, 1977 in which he refers to his Order of January 4, 1977. Plaintiff requests that this Court study the original Order. Plaintiff was clearly directed to obtain his medical records from the Bureau of Medicine and Surgery.

This Court clearly has jurisdiction over all federal agencies and their personnel.

The Plaintiff has the Constitutional right of Association with members of the medical profession as he himself deems fit. The Privacy Act and the the Freedom of Information Act clearly prescribe submission of documents directly to those citizens requesting them, and not through intermediaries. It is clear that the action taken by the Defendants was not proper under applicable law.

The Plaintiff encloses a completely legal copy of "U.S. Marshall's Service" dated April 28, 1977 and showing personal service on both Defendants.

The Plaintiff has exhausted all available administrative remedies applicable to his suit.

Therefore the Plaintiff requests this Court to grant him relief in the sum of \$100,000 as summary judgment.

Respectfully, etc.

Ira G. Jaffess

Ira G. Jaffess
June 4, 1977

BEST COPY AVAILABLE

Filed
6/14/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IRA G. JAFFESS, :

Plaintiff, :

-against- :

L. J. SCHAFFNER, Director, :
Health Records Division, :
Bureau of Medicine and Surgery, :
Department of the Navy, and :
SECRETARY OF THE NAVY, :

Defendants. :
----- X

AFFIDAVIT

77 Civ. 1987 (WK)

Copy hand carried
to Judge
Knappa Chambers

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MICHAEL H. DOLINGER, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the
Office of Robert B. Flake, Jr., United States Attorney for
the Southern District of New York and counsel to defendants
in this action.

2. I submit this affidavit in opposition to plain-
tiff's motion for summary judgment by which he seeks
damages from defendants based on their failure to provide
him a copy of a letter from his Navy psychiatric file.

3. Upon authorization by the Bureau of Medicine and
Surgery, Department of the Navy, I mailed to plaintiff on
June 13, 1977 a copy of the February 15, 1943 letter that
he had previously unsuccessfully requested from the Navy.
(A copy of my letter is attached as Exhibit A.)

4. The Bureau of Medicine and Surgery had originally
refused to provide the letter directly to Mr. Jaffess and
had requested that he designate a physician to receive it

because of the judgment of a Navy psychiatrist that revelation of the contents of the letter might be detrimental to Mr. Jaffess. The imposition of such a condition for release of the letter is authorized by Department of Navy regulations pertaining to the implementation of the Privacy Act. SECNAVINST 5211.5A, at §6a(5)(e) (41 Fed. Reg. 50661). (A copy of the pertinent provision is attached as Exhibit B).

5. This special provision for conditional release of medical information is in turn authorized by the Privacy Act, 5 U.S.C. §552a(f)(3), which mandates in pertinent part that:

"...each agency that maintains a system of records shall promulgate rules...which shall

* * *

* * *

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedures, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him."

6. The decision to release the letter in question directly to Mr. Jaffess was based upon a change of opinion by the Navy psychiatrist concerning the possible effect of the letter.

7. In view of the foregoing, it is respectfully requested that this Court deny plaintiff's motion for

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77-1364

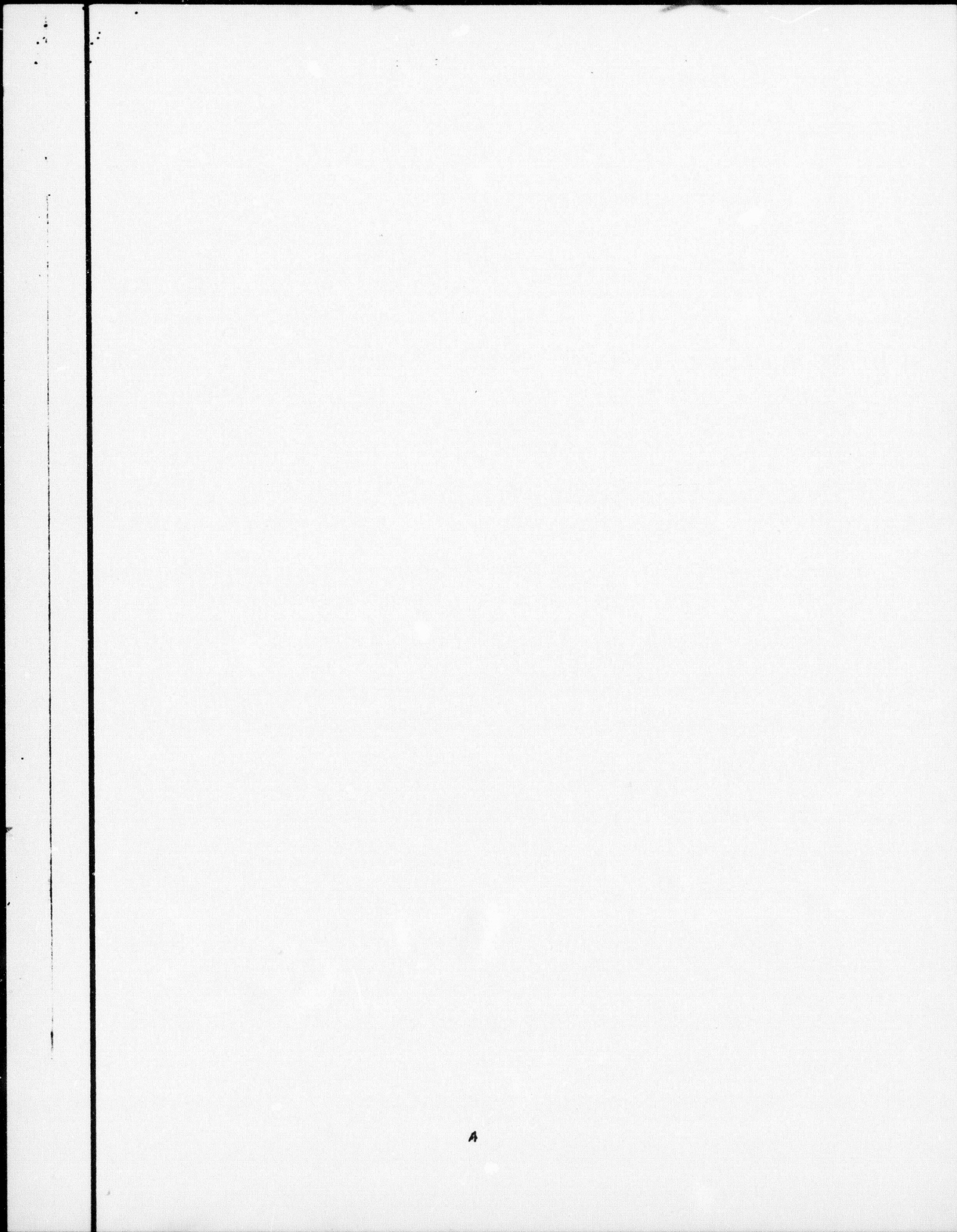
summary judgment and dismiss the Complaint for failure to
state a cause of action and mootness.

MICHAEL H. DOLINGER
Assistant United States Attorney

Sworn to before me this
13th day of June, 1977.

151
Notary Public

LAWRENCE MASON
Notary Public, State of New York
No. 63-2572000
Qualified in Bronx County
Commission Expires March 30, 1979



MHD:js
77-1364

June 13, 1977

Mr. Ira G. Jaffess
150 Bennett Avenue
New York, New York 10050

Re: Jaffess v. Schaffner
77 Civ. 1987 (WK)

Dear Mr. Jaffess:

Pursuant to a decision by the Bureau of Medicine and Surgery, Department of the Navy, I have been authorized to release to you a copy of a letter dated February 15, 1943 from the District Intelligence Office, Third Naval District addressed to the Commanding Officer, U.S. Naval Hospital, Brooklyn, New York. I therefore enclose a copy of that communication with this letter.

The decision to release the letter was based upon a change in the opinion of a Navy psychiatrist. However, the Navy retains the right under the Privacy Act to condition the release of medical records in appropriate cases on the designation by the requester of a physician to receive such records.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: MICHAEL H. DOLLINGER
Assistant United States Attorney
Telephone: (212) 791-9174

Enclosure

authority) may deny an individual's request for access to that record pursuant to subsection (d) (5) of reference (a), provided that there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(c) Where a denial authority, or the designated review authority, determines that the grant of access to the entire contents of a record to the requesting individual would result in a clearly unwarranted invasion of the personal privacy of another individual mentioned in the same record, and such other individual has not furnished his written consent for the record to be disclosed to the requester, the portions of the record that pertain solely to such other individual shall be deleted from a copy of the record. The requesting individual shall then be granted access to a copy of the remaining portions of the record.

(d) As indicated in subparagraph 5a, above, where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this paragraph. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and paragraph 7, below, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian. (Members of the naval service, once properly accepted, are not minors for the purposes of this instruction.)

(e) Subject to the provisions of this paragraph, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse effect upon the individual to whom it pertains, the

individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(f) Criteria for determinations on requests for amendment of records are set forth in subparagraph 6d (1), below.

(6) Time requirements for making acknowledgments and determinations

i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) of receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. No separate acknowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10-working-day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(b) Determinations and required action on initial requests for notification, access, or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

b. Notification procedures

(1) Action upon receipt of request: Subject to the provisions of this paragraph, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by subparagraph 6a(6) (a), above, and take one of the following actions:

(a) If consideration cannot be given to the request, because —

(i) the individual's identity is not satisfactorily verified;

(ii) the record system is not adequately identified, or the individual has not furnished the

Sir:

Form No. USA-33a-270
(Rev. 6-1-76)

You will please take notice that a
of which the within is a copy, was this day
duly entered in the within entitled action,
in the office of the Clerk of this Court.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

Sir:

Please take notice that the within
will be presented for settlement and sig-
nature to the Honorable
United States District Judge, at the office of
the Clerk, United States Courthouse, Foley
Square, Borough of Manhattan, City of New
York, on the _____ day of _____, 19 _____, at
10:30 o'clock in the _____ noon or as soon
thereafter as counsel can be heard.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

IRA G. JAFFESS,

Plaintiff,

-against-

L. J. SCHAFFNER, Director,
Health Records Division,
Bureau of Medicine and Surgery,
Department of the Navy, and
Secretary of the Navy,
Defendants.

AFFIDAVIT

77 Civ. 1987 (WIC)

ROBERT B. FISKE, JR.

TEL. ~~XXXX~~

United States Attorney
Attorney for USA

791-9174

Due service of a copy of the within is here-
by admitted.

New York, _____, 19 _____

Attorney for _____

To

Attorney for _____

FPI MI-6 15 76 308 5677

150 Bennett Avenue
New York, New York 10040

June 17, 1977

Honorable Whitman Knapp,
United States District Judge
United States Courthouse
Foley Square,
New York, New York 10007

Re: 77 CIV.1987

Dear Sir:

With reference to an Affidavit dated June 13th, 1977, by an Assistant Attorney on the staff of the Attorney for the Southern District.

Defendants seek to make good the Plaintiff's claim to compensation for failure to remit documents in accord with the Privacy Act and the Freedom of Information Act.

However, the Plaintiff is not seeking compensation for present or future actions of the Defendants but for past failure in meeting the requirements of law. Not only is the Privacy Act involved but the Plaintiff's right of Privacy guaranteed by the Constitution along with the Constitutional rights of freedom of association.

The Congress in the Privacy Act ordered each agency of government to set up an office for the expediting of documents requested by the citizenry. In the matter of third parties access to that material such access should be found defective not only as regards the Privacy Act but Constitutionally void.

The document submitted to the Plaintiff; a letter from the District Intelligence Office of the 3rd Naval District dated February 15, 1943, is only one of several documents requested. Two waivers of compensation, under physical duress, were signed by the Plaintiff in a naval hospital. One waiver in February 1943 and one in March of 1943. Both the Bureau of Medicine and the Naval Investigative Service deny these waivers to be in their files.

Plaintiff was discharged from the Naval service on the basis of a history of a former illness which was cured four years prior to his entering that service. The Plaintiff was never ill during his naval service or during the period of February and March 1943 when he was falsely hospitalized by Naval Intelligence for political reasons. Records of the Bureau of Naval Personnel clearly show that Plaintiff maintained an efficiency average of 3.8 during his naval service and was never absent from duty due to illness. During this service Plaintiff was also promoted in rating due to excellent performance of his duties.

It is incumbent upon the Court to set an example for the defense community so that it will no longer trample upon individual rights in the future.

Respectfully,

Ann G. Jaffess
Ann G. Jaffess

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